

# **Vegetation Management Plan (VMP)**

**Town of Franklin, MA**

**2012-2016**

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## **Statement of Goals and Objectives**

This Vegetation Management Plan is intended to establish criteria for the Town of Franklin to control vegetation along municipal Rights of Way (ROW) in compliance with the ROW Management Regulations (333 CMR 11.00) as promulgated by the Massachusetts Department of Agricultural Resources.

The primary objective of this VMP is to provide the public with safe and unobstructed ROW's while utilizing an integrated pest management program and minimizing reliance upon herbicides. Vegetation maintenance is necessary along public ROW's to control unwanted vegetation that may pose a public nuisance, result in safety hazards or cause damage to structures and infrastructure. The goal of the program is to control undesirable vegetation while maximizing environmental protection and minimizing herbicide use. The plan's success will be based upon periodic monitoring and inspection which is expected to result in:

- control of target vegetation
- reduction of chemical application rates
- reduction in frequency of chemical application
- protection of sensitive areas

This VMP will serve as a technical guidance for individuals involved in ROW vegetation management and as an accessible source of information for residents and public officials.

## **Past Results**

Over the past 5 years since implementing the previous VMP, the Town of Franklin has been able to reduce the amount of herbicides needed to target vegetation that poses a safety hazard, public nuisance or has invasive properties that can cause detriment to natural resources. The reduction in herbicide use can be attributed to the increased use of mechanical methods for removal, along with increased street sweeping and the adoption of Low Impact Development techniques during right of way development and redevelopment. The increase in street sweeping has proven beneficial towards maintaining stormwater quality and has provided the unforeseen benefit of removing sediment from the edge of the roadway before it can be used by plants that would need to be managed by mechanical or chemical controls. Additionally, by integrating low impact development techniques including rain gardens that utilize native and low maintenance plant species, the Town now has a reduced dependence on utilizing chemical controls.

## **Target Vegetation**

Target vegetation will be limited to species that pose a safety hazard, compromise infrastructure, are a public nuisance, or are invasive and may have detrimental effects on natural resources.

### **Hazard Vegetation**

Hazard vegetation poses a risk to public safety and represents vegetation that impedes movement along public ways. Hazard vegetation may obscure sightlines, obscure signs, obscure vehicular movement, create windfall hazards, and cause winter shading (causing

ice/reduces melting). Hazard vegetation may include but is not limited to trees, tree limbs and shrubs.

#### Nuisance Vegetation

This category includes vegetation that could cause problems to the general public, employees or contractors and generally include poisonous and noxious plant species. Nuisance vegetation poses a risk to safety and health often due to dermal contact with plants that are poisonous, heavily-thorned or densely colonized. Target vegetation in this category is primarily Poison Ivy and within 10 feet of the edge of pavement.

#### Detrimental Vegetation

Detrimental vegetation includes grasses and woody plants that are destructive or compromise the function of infrastructure including: cracks along the roadway, pavement/bridge joints, medians/traffic islands, and drainage structures/drainageways.

#### Invasive Vegetation

Invasive species can colonize a space and virtually eliminate the biodiversity of an area. This can result in changes in wildlife due to habitat change, impede natural hydrologic function and cause an overall change in the natural functions of an area. Managing invasive species via mechanical means can be ineffective and/or detrimental depending on the species, making the colonization stronger. In these situations, the use of an herbicide may be necessary. Working in conjunction with the Conservation Commission and/or private groups, there may be opportunities to remove invasive vegetation and encourage the growth of native species. Vegetation listed on the MA Department of Agricultural Resources *Massachusetts Prohibited Plant List* are included in this category.

### **Vegetation Management Methods & Actions to Minimize Herbicides**

Vegetation management methods will include both non-chemical techniques and chemical application where necessary as well as an Integrated Pest Management (IPM) Program to minimize herbicide use. Vegetation management may involve the following methods:

- Physical Control – sustainable landscape methods, sealing cracks, repaving.
- Mechanical Methods – hand cutting, mowing, selective trimming.
- Chemical Control – low volume foliar herbicide treatments & cut stump surface treatment.

The control methods selected will be chosen based on a variety of factors and with the goal to achieve a long-term, low maintenance vegetation management program.

#### Physical Control

Physical control methods will rely primarily on sustainable landscape methods and pavement maintenance.

#### *Sustainable Landscapes*

Sustainable landscape techniques include alternative methods for new development and reconstruction that minimize roadside maintenance and promote active planting of competing vegetation. This may include:

- Encouraging use of seeding and planting specifications that require less maintenance
- Planting of native trees, shrubs, wildflowers and grasses to compete and replace undesirable species
- Where applicable allow private abutters to maintain ROW's
- Encouraging use of Low Impact Development (LID) techniques including residential raingardens.

#### *Pavement Maintenance*

Pavement maintenance will consist of sealing cracks, general ROW repairs including repaving and installing new sidewalks and use of groundcovers where appropriate, such as under guardrails. The Town will complete routine street sweeping town wide twice per year. Street sweeping takes place four times per year in the downtown area of Franklin where the majority of the herbicide application takes place. Over the past several years the need for herbicide applications has decreased in the downtown area likely due to the increase in street sweeping.

#### Mechanical Control

Mechanical control methods may include hand cutting, mowing, and/or selective trimming.

#### *Hand Cutting*

Hand cutting consists of the mechanical cutting of target species using chain saws and brush saws. Target species are cut as close to the ground as practical. Hand cutting is used in order to protect environmentally sensitive sites. It is also used on target vegetation greater than twelve feet in height. Hand cutting is used on those restricted sites where terrain, site size or sensitivity renders mowing impossible or impractical. Hand cutting may be practiced at any time during the year.

#### *Mowing*

Mowing consists of the mechanical cutting of target vegetation using machines. Machines used for mowing can include push mowers, large rider mowers, rear deck mowers, brush mower, edgers and line trimmers. Selection of specific equipment is based on terrain, target vegetation size and equipment availability. Mowing will be used in areas where terrain and target stem size permit safe and efficient use of the above machinery. Mowing will be the principal method for vegetation control along road shoulders and where herbicide use is prohibited. Mowing will be conducted seasonally when weather conditions allow.

#### *Selective Trimming*

Selective trimming consists of the mechanical pruning of the tops of encroaching limbs of tall trees that may hamper roadway access. Trimming will be accomplished using

aerial lifts via trucks or tractors, or if terrain or obstruction prevent equipment access, by climbing crews.

### Chemical Control

#### *Foliar Treatment*

Foliar treatments involve the selective application of an herbicide diluted in water, to the foliage. Several types of equipment for foliar treatments may be used. These could include: backpack sprayers, hand-held pump sprayers or a motorized truck-mounted sprayer. Foliar treatments with backpack and hand-held pump sprayers are used on low-density target vegetation. The herbicide solution will be diluted to the lowest possible percent depending on the plant species. Motorized application equipment may be used for foliar treatment on areas where the vegetation density is high and the use of a backpack spray may not be as effective..

These foliar applications will take place when plants are in full leaf and actively growing, and in accordance with the product label. Foliar treatments are used because, when used according to the Town's application program, they are an effective and efficient method to control the whole target plant. Controlling the whole target plant reduces competition from sprout growth.

#### *Cut Stump Surface Treatment*

Cut stump treatments consist of mechanical cutting of target species using chain saws immediately followed by herbicide treatment applied with a squirt bottle, a hand pump sprayer, or painted on the freshly cut surface of the stump. The herbicide application is limited to the freshly cut surface of the remaining stump. The cutting procedure is identical to that outlined in Hand Cutting. Cut stump application can be effective during the dormant period, however may not be effective during times of sap flow (i.e., maples and birches during the months of February through early April). This is the case since flowing sap will limit the herbicide from being absorbed into the stump down to the roots.

Monitoring – All roadsides will be surveyed prior to any scheduled treatment program. Monitoring will be conducted by foot and/or by vehicle. Monitoring of areas may result from requests from the public. All monitoring records will be maintained by the Town.

Maintenance – All roads will be cleaned using a street sweeper. Cracking asphalt and sidewalks and other ROW defects will be repaired. The use of ground cover will be used where appropriate to assist in the prevention of vegetation growth. The use of groundcover can sometimes help outcompete and/or crowd out poison ivy and some invasive species.

Record Keeping – A log of areas surveyed will be maintained by the Town for future planning and reference. Areas maintained either through physical repair, mechanical or chemical control will be recorded.

Control Tactics – The decision to use one or a combination of vegetation control techniques will depend on the site-specific situation. The control tactics selected will control nuisance vegetation in the most environmentally and efficient manner.

<b>Table 1. Summary of Control Methods</b>		
<b>Target</b>	<b>Conditions</b>	<b>Control Methods</b>
Grasses	Where landscape, traffic and safety conditions allow.	Sustainable Landscapes Mechanical (mowing)
Low Growth Species	Where landscape, traffic and safety conditions allow. Species not poisonous	Sustainable Landscapes Mechanical (mowing)
Low Growth Species	Landscape prevents mowing Species not poisonous	Mechanical (hand cutting)
Grasses & Low Growth Species	Within cracks or joints Safety eliminates use of mechanical methods	Chemical (low volume foliar or high volume) <sup>1</sup>
Low Growth Species	Poison Ivy or other poisonous species within 10 feet of ROW or other municipal structure	Chemical (low volume foliar or high volume) <sup>1</sup>
Tall Growth	Individual trees or branches	Mechanical (hand cutting or selective trimming)
Tall Growth	Plants >12 feet and landscape allows	Mechanical (hand cutting)
Tall Growth	Plants >12 feet and species are persistent and/or invasive	Chemical (cut stump surface treatment) <sup>1</sup>

<sup>1</sup>Except in no spray areas.

## Justification of Herbicide Use

This plan focuses on the minimization of herbicide use within ROWs. Vegetation management along public ways is necessary to control unwanted vegetation that pose a public nuisance, obstructs views and creates a traffic or pedestrian hazard. By following the proposed vegetation management methods and IPM approach discussed in this plan, physical and mechanical treatment controls most plants that interfere with traffic, visibility and safety. Chemical controls are necessary in management situations where topography, access, growth rate, species specific factors, applicator safety, or environmental/social concerns limit the potential for control by physical or mechanical methods.

Chemical controls are often the preferred method or only method of control for plants which pose a health hazard for the technician in the field, either directly or as a function of location. Poison Ivy, for example, is extremely hazardous to handle, biologically resistant to mechanical removal and can pose a serious threat. Individuals attempting to control curbside plants and weeds by pulling them or trimming them can put a technician in danger from traffic and is generally not effective for long term control.

In many situations poisonous plant species, such as Poison Ivy, cannot be effectively controlled by mowing. Due to the low growing nature of Poison Ivy, and the fact that it grows along stolons and reproduces both by fine and fibrous ribosomes as well as by berry, it is nearly impossible to control through cultivation, hand pulling or mowing at the height generally used in roadside mowing operations. Moreover, the climbing

characteristics of this plant over stone walls, tree trunks and guardrails, make mechanical control out of the question for safety and economic reasons. In some locations, the use of herbicides may help develop herbaceous communities that out-compete Poison Ivy and otherwise promote natural control of these plants.

Mowing will control most grasses. Herbicide applications, however, are used where mechanical control is not feasible due to location, stem density and/or height. Although grass is more often a desirable vegetative cover along public ways, in areas where it is a target, it is difficult and sometime dangerous to remove by mechanical treatment methods. These areas include, but are not limited to, cracks in asphalt, along guardrails, paved traffic islands, sidewalks and curbs. In these instances, grass can be identified as target vegetation.

Woody vegetation (low and high growth species) growing along the ROW that interfere with pedestrian or vehicle safety is controlled by a variety of techniques. Pruning or ground cutting using hand tools or chain saws primarily controls large woody vegetation. Depending upon the species of plant removed and its proximity to other vegetation, these stumps may be treated with an herbicide to prevent resprouting, although they often can be removed mechanically.

Small woody plants that are growing along the road shoulder in an accessible location will usually be mowed along with the roadside grass. Woody plants that are growing over obstacles that would impede the mower, or have a viney growth habit and are not practical to hand cut or chip, or that grow very rapidly, can be controlled through the use of low volume foliar application of herbicides.

Finally, invasive species elimination is sometimes warranted to promote the growth of a more diverse mix of vegetative species, reduce sedimentation and improve natural drainage and wildlife habitat. Invasive species are rarely controlled with ground cutting techniques and generally need to be eliminated via herbicide application to restore an area.

The plan also encourages the use of sustainable landscaping and/or LID practices that aim to control hazards, detrimental, nuisance and invasive vegetation. LID is an environmental design approach based on a variety of techniques and methods with the goal to cost-effectively reduce negative impacts to surrounding natural resources. Through various methods the Town encourages the use of raingardens, bioretention areas and tree box filters. All of these methods aim to promote stormwater management, groundwater infiltration and help eliminate unwanted vegetation by reducing disturbance and promoting the use of native species to outcompete unwanted vegetation.

## **Identification of Sensitive Areas**

Sensitive areas are defined within 333 CMR 11.00 as areas within ROWs in which public health and environmental concerns warrant special protection to further minimize risks of unreasonable adverse effects (of herbicides). These include public groundwater supplies, public surface water supplies, private drinking water supplies, surface waters, wetlands, rivers, certified vernal pools, inhabited areas and agricultural areas. The Franklin Conservation Commission will be consulted with to assist in identifying sensitive areas.



For the purposes of identification, sensitive areas can be separated into two categories: areas that are and areas that are not readily identifiable in the field.

Sensitive areas that are not readily identifiable in the field include public groundwater supplies, private water supplies and public surface water supplies. Additional sources available to identify these areas include:

- Massachusetts Department of Environmental Protection (MassDEP) Water Supply Maps (1:25,000); delineating the perimeter of public water supply watersheds and the location of public wells.
- MassDEP Wetlands Conservancy Maps (scale 1:1,000).
- Municipal maps and records including those from the Health Department to identify private water supplies.
- Regional Planning Agency maps and records.
- U.S. Fish and Wildlife Service National Wetlands Inventory Maps.
- Conservancy Program & Ortho Photo Information – MassDEP (1:5,000).
- Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program.
- Available MassGIS maps.

Sensitive areas that are readily identifiable in the field include surface waters, wetlands, rivers and agricultural areas. The methods utilized to identify these sensitive areas will include:

- Consult MassGIS spatial data maps to locate any of these sensitive areas that may already be identified on these maps.
- Prior to commencement of herbicide application operations, the treatment crew will be provided the marked topographic map.
- The treatment crew will visually survey the area to be treated for any additional sensitive areas as well as areas where the ground is bare or has limited re-growth from previous herbicide applications.
- Sensitive areas will be identified and marked in the field prior to application.

The following is a description of how the sensitive areas will be identified for required protection:

- Consult appropriate reference materials and sources to determine the precise locations of sensitive areas.
- Mark boundaries of each area on a U.S. Geological Survey (USGS) topographical maps, CAD (Computer Aided Drafting) drawings or GIS output.
- Prior to commencement of herbicide application operations, treatment crew will be provided with above maps identifying sensitive areas.

- Appropriate Department of Public Works staff will deploy in advance of the main herbicide application operation to locate and flag these boundaries or the boundaries of the appropriate limited/no-spray areas.
- No spray areas will be identified with red or orange paint on the curb or in roadway at start and finish of no spray areas or with orange flags marked in the same manner, as appropriate.

**Table 2. Sensitive Area Restrictions**

<b>Sensitive Area</b>	<b>No Spray Areas</b>	<b>Limited Use Areas</b>	<b>Where Identified</b>
Wetlands and Water Over Wetlands	Within 10 feet	10 – 100 feet; 12 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps and identify on site
Certified Vernal Pool	Within 10 feet	10 feet to the outer boundary of any Certified Vernal Pool Habitat; 12 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps and identify on site
Public Ground Water Supply	Within 400 feet (Zone I)	Zone II or IWPA (Interim Wellhead Protection Area which is the Primary Recharge Area); 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps
Public Surface Water Supply	Within 100 feet of any Class A public surface water source	100 feet to the outer boundary of the Zone A; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps
	Within 10 feet of any tributary or associated surface water body located outside of the Zone A	10 feet to the outer boundary of the Zone A; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	
	Within 100 feet of any tributary or associated surface water body located within the Zone A of a Class A public surface water source		
	Within a lateral distance of 100 feet for 400 feet upstream of any Class B Drinking Water Intake	Within a lateral distance of between 100 -200 feet for 400 feet upstream of intake; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	
Private Water Supply	Within 50 feet	50 – 100 feet; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	In YOP will list and identify on site
Riverfront Area	Within 10 feet from mean annual high-water line	10 feet from the mean annual high water line and the outer boundary of the Riverfront Area;	YOP Maps and identify

		12 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	on site
Agricultural and Inhabited Areas	N/A	0 – 100 feet 12 months must elapse between application; Selective low pressure, using foliar techniques or basal or cut-stump applications.	Identify on site
State-listed Species Habitat <sup>1</sup>	No application within habitat area except in accordance with a Yearly Operational Plan approved in writing by the Division of Fisheries and Wildlife		YOP Maps

<sup>1</sup>Includes Estimated Habitats of Rare Wildlife and the Priority Habitats for State-Listed Species as shown on the most recent edition of the Massachusetts Natural Heritage Atlas prepared by the Natural Heritage and Endangered Species Program (NHESP) within the Massachusetts Division of Fisheries and Wildlife.

## Operational Guidelines for Applicators Relative to Herbicide Use

As required by regulations, application to roadside ROW requires a valid Category 40 pesticide certification from the Department of Agricultural Resources. The applicator(s) will be a Town employee and/or certified contractor working under the supervision of the Town of Franklin Project Manager. All applicators and their supervisors will have a copy of the VMP and Yearly Operational Plan (YOP) with them at all times for reference during the herbicide application. In addition to the applicable rules and regulations, applicators will adhere to the following operational guidelines. Only herbicides listed on the current ROW Sensitive Area Materials List will be used.

### Weather

Herbicide application will be restricted during certain adverse weather conditions, such as rain or wind. Herbicide applications will not be conducted during periods of moderate or heavy rainfall. Foliar applications can be effective in light mist situations, however any measurable rainfall that creates leaf runoff will wash the herbicide off target vegetation. If foliar applications are interrupted by unexpected rainfall, the treatment will not resume until the rain ends and active leaf runoff has ceased. Cut stump treatments will not be conducted during measurable precipitation events. Cut stump treatments will cease during measurable precipitation and will not resume until precipitation has ceased.

To minimize off-target drift, the applicator will comply with the following restrictions:

- During periods of wind, which are strong enough to bend the tops of the main stems of trees on the roadside, the applicator will periodically observe the application of the foliar treatment to insure that there is no significant movement of the herbicide. If the applicator can see the herbicide moving off target, the application will immediately stop until the wind has subsided enough to permit further applications.
- Herbicide solution to be used for a foliage application may contain low drift agents. Low drift agents may be added to the foliage herbicide solutions as per the low drift agent label. In moderate wind conditions, as per label recommendations, more low drift agent may be added, at the discretion of the applicator to control increased drift.
- Foliar treatment will not be made to target vegetation that exceeds approximately twelve feet in height.

### Equipment Calibration

Foliar application equipment will be calibrated prior to application and in accordance with manufacturer's recommendations. Foliar application equipment will be calibrated to maintain pressures not exceeding sixty pounds per square inch at the nozzle. Applicator nozzles will be adjusted to apply a coarse spray pattern.

Cut stump treatment squirt bottle applicators or hand pump sprayers will be adjusted to deliver the herbicide solution in a thin stream to the target zone.

### Sensitive Area Restrictions

In defined sensitive areas, there exists a no-spray area where herbicide use is prohibited and a limited spray area where herbicide use is allowed under certain conditions. In places around sensitive areas where herbicide use is allowed, only the minimum labeled rate of application for the control of target species can be applied.

### **Qualifications of Individuals Developing & Submitting a Plan**

Mr. James Esterbrook is an experienced public works official for the Town of Franklin and has overseen the vegetation management approvals for the Town for the past several years.

Comprehensive Environmental Inc. (CEI) is a civil engineering and environmental science firm that has served municipal, state, and federal agencies throughout the New England area for nearly 25 years. Ms. Stephanie Hanson is a Project Manager and Principal Scientist at CEI specializing in the areas of wetlands, water resources, stormwater, environmental permitting and resource area protection. Ms. Hanson is a Certified Ecologist and LEED Green Associate with a B.S. in Environmental Geoscience and M.S. in Environmental Science.

### **Alternative Land Use Options**

Every effort will be given for alternative land use options. However, there are specific criteria to be met for adoption of alternative land use options. The alternative land use option must control the nuisance vegetation in a similar manner, environmentally and effectively as allowed in this VMP. For example, a common practice of abutters to roadways is to mow and maintain road shoulders. In this instance, the monitoring program would reveal that the area does not warrant vegetation control. A written agreement would clearly specify that the Town will not treat vegetation in these areas and outline the landowner's responsibilities for vegetation control.

### **Remedial Plan to Address Spills and Related Accidents**

All mixing and loading of herbicides will be conducted at the central facility where the herbicides are stored either at a secure Town facility if the application is completed by a Town employee or offsite if the application is being completed by an outside contractor. Only the amount of herbicide necessary to carry out the vegetation control, based on monitoring results, will be mixed to ensure that there will be no waste and minimize potential problems. The vehicles carrying out the spray operations will be equipped with a bag of absorbent, activated charcoal, leak-proof containers, a broom and a shovel in

case of minor spills. A clipboard log of the herbicides on the vehicle will be kept on the vehicle. Herbicide labels and fact sheets will be carried on-site by the applicator.

As soon as any spill is observed, immediate action will be taken to contain the spill and protect the spill area. The cause of the spill must be identified and secured. Spill containment will be accomplished by covering the spill with absorptive clay or other absorptive material or, for large spills, building clay or soil dikes to impede spill progress. Until completely remediated, the spill area will be protected by the placement of barriers and by the delineation of the spill area by crew members. If a fire is involved, care will be taken to avoid breathing fumes from any burning chemicals.

Minor spills will be remedied by soaking up the spill with adsorption clay or other adsorptive material and placing it in leak proof containers, removed from the site and disposed of properly. Dry herbicides, such as granulars, will be swept up or shoveled up directly in leak proof containers for proper disposal. All contaminated soil will be placed in leak proof containers, removed from the site and disposed of properly. Activated charcoal will be incorporated into the soil at the spill location per label instructions. Any minor spill will be reported to the Massachusetts Department of Agricultural Resources, Division of Crop & Pest Services.

Major spills will be handled in a similar manner as minor spills, except in cases where the spill cannot be contained and/or removed by the crew. In this case the MassDEP Incident Response Unit and the Massachusetts Department of Agricultural Resources, Division of Crop & Pest Services must be contacted.

Emergency first responders (including but not limited to fire and police) should be immediately notified of a major spill and/or any size incident deemed a possible risk to public health, safety and the environment.

MassDEP will be contacted when there is a spill of a regulated quantity, regardless of major or minor spill status and in accordance with 310 CMR 40.0000 Massachusetts Contingency Plan.

In the event of a spill, information on safety precautions and clean up procedures may be gathered from the following sources:

- Herbicide label
- Herbicide MSDS sheet
- Herbicide Manufacturer
  - DOW (800) 992-5994
  - Dupont (800) 441-3637
  - Monsanto (314) 697-4000
  - NuFarm (877) 325-1840
- Massachusetts Pesticide Bureau Main # (617) 626-1720  
Michael McClean (617) 626-1781
- Massachusetts Department of Environmental Protection

Emergency Response (888) 304-1133

- Department of Public Health  
Environmental Toxicology Program (617) 624-5757
- Massachusetts Poison Control Center  
24-Hour Hotline (800) 222-1222
- Town of Franklin Public Works Department 508-520-4916
- Town of Franklin Fire Department 508-528-2323 or 911
- Town of Franklin Police Department 508-528-1212 or 911
- Chem-Trec 800-424-9300
- National Pesticide Information Center 800-858-7378
- National Animal Poison Control Center 888-426-4435

## **Monitoring Plan**

On an annual basis, the Town will evaluate the success of the vegetation management program. The goal of this monitoring plan is to evaluate the relative success of vegetation control efforts. Following treatment, after an appropriate period of time, treatment areas will be revisited. The survivorship or regrowth of nuisance vegetation will be recorded and evaluated periodically to determine whether the program is meeting its goals. Any changes will be reflected in the next year's YOP as applicable.

## **Notification Procedures**

Once approved, a copy of the VMP will be provided to the Town Manager, Board of Health and Conservation Commission. Upon approval of the VMP and YOP and 21-days in advance of the application of herbicide to a ROW, the Town will notify the Department, Board of Health, water supplier, Town Manager and Conservation Commission of the application. Notification will include: method and location of application, herbicide fact sheet, EPA registration number for herbicide and applicator contact information. Additionally, at least 48-hours prior to a ROW herbicide application, the applicant will publish in a local newspaper the following information: methods and location of pesticide application, approximate dates of herbicide application, name of herbicide(s) to be used, description/purpose of application and contact information for designated individual representing the Town whom citizens can contact.

333 CMR 11.00: RIGHTS OF WAY MANAGEMENT

Section

- 11.01: Purpose
- 11.02: Definitions
- 11.03: General Provisions
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- 11.05: Vegetation Management Plan (VMP)
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11.01: Purpose

The purpose of 333 CMR 11.00 is to establish a statewide and uniform regulatory process which will minimize the uses of, and potential impacts from herbicides in rights-of-way on human health and the environment while allowing for the benefits to public safety provided by the selective use of herbicides. Specific goals of 333 CMR 11.00 are to:

- (1) Ensure that an Integrated Pest Management (IPM) approach to vegetation management is utilized on all rights-of-way covered by 333 CMR 11.00.
- (2) Establish standards, requirements and procedures necessary to prevent unreasonable risks to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.
- (3) Ensure ample opportunity for public and municipal agency input on potential impacts of herbicide application to rights-of-way in environmentally sensitive areas.
- (4) Establish a mechanism for public and municipal review of rights-of-way maintenance plans.

11.02: Definitions

For the purposes of 333 CMR 11.00, unless the context clearly requires otherwise, the following definitions shall apply:

Agricultural Area includes, but is not limited to, actively cultivated gardens, greenhouses, orchards, fields, pastures, and other areas under cultivation or agricultural management.

Applicant, any person representing any federal, state or local government or agency, utility, railroad or pipeline, that intends to maintain a right-of-way in the Commonwealth by application of herbicides.

Associated Surface Water Body, as identified on the most current available maps prepared by the Department of Environmental Protection, any body of water that is hydrologically connected to a Class A surface water source.

Ballast, the coarse gravel or crushed rock on which the ties, tracks and switching, signaling and communication devices of a railroad are laid.

Broadcast, any non-selective herbicide application technique which results in application to all vegetation within a target area.

Certified Vernal Pool, a confined basin depression, certified and mapped by NHESP pursuant to the provisions of 310 CMR 10.57(2)(a)5. and 6., which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations.

11.02: continued

Certified Vernal Pool Habitat, that vernal pool habitat which has been certified and mapped by NHESP pursuant to the provisions of 310 CMR 10.57(2)(a)5. and 6. or, in the event that such habitat has not been mapped, the area extending 100 feet horizontally outward from the boundary of any Certified Vernal Pool.

Class A Waters, waters which are designated as a source of public water supply, as defined in 314 CMR 4.05(3)(a).

Class B Drinking Water Intakes, intakes to Class B waters suitable as sources of public water supply with appropriate treatment, as defined at 314 CMR 4.05(3)(b) and as identified on the most current available maps prepared by the Department of Environmental Protection.

Department, the Department of Agricultural Resources.

FIFRA, the Federal Insecticide, Fungicide and Rodenticide Act, Public Law 92-516.

Foliar Treatment, any technique which applies herbicide to leaves of target vegetation.

Inhabited Area, any area where people generally live, work or gather, including, but not limited to, any residence, school, hospital, park or recreational facility.

Interim Wellhead Protection Area (IWPA), for public water systems using wells or well fields that lack a Department of Environmental Protection-approved Zone II, an interim wellhead protection area, as that term is defined in the Massachusetts drinking water regulations, 310 CMR 22.02, and as identified on the most current available maps prepared by the Department of Environmental Protection, shall apply. Generally, this is a 1/2-mile radius for sources whose approved pumping rate is 100,000 gallons per day or greater. For smaller sources, the radius in feet is determined by multiplying the approved pumping rate in gallons per minute by 32 and adding 400.

Limited Application Waiver, a waiver from the requirements of 333 CMR 11.05 and 11.06, granted at the Department's sole discretion pursuant to 333 CMR 11.03(14), when the reason for the application is emergency public health or safety or when the application is for one time only.

Limited Spray Area, any area that is both within a Right-of-Way and within:

- (a) any Zone II or IWPA;
- (b) a distance of between 100 feet and 400 feet of any Class A Surface Water Source;
- (c) a distance of between ten and 200 feet of any tributary or associated surface water body where the tributary or associated surface water body runs outside the Zone A for the Class A surface water source;
- (d) a lateral distance of between 100 and 200 feet for 400 feet upstream, on both sides of the river, of a Class B Drinking Water Intake;
- (e) a distance of between 50 and 100 feet of any identified Private Well;
- (f) a distance of between 10 and 100 feet of any Wetlands or Water Over Wetlands;
- (g) a distance of between ten feet from the mean annual high water line of any river and the outer boundary of the Riverfront Area;
- (h) a distance of between ten feet from any Certified Vernal Pool and the outer boundary of any Certified Vernal Pool Habitat; and
- (i) a distance of 100 feet of any Agricultural or Inhabited Area.

Low Pressure, pressure under 60 pounds per square inch (psi).

Maps, United States Geological Survey maps of scale 1:25,000 or other maps, as determined by the Department, which are of such accuracy and scale to provide sufficient detail so that sensitive areas can be delineated.

NHESP, the Natural Heritage and Endangered Species Program within the Massachusetts Division of Fisheries and Wildlife.



11.02: continued

No-spray Area, any area that is both within a Right-of-Way and within:

- (a) any Zone I;
- (b) 100 feet of any Class A Surface Water Source;
- (c) 100 feet of any tributary or associated surface water body where the tributary or associated surface water body runs within 400 feet of a Class A surface water source;
- (d) ten feet of any tributary or associated surface water body where the tributary or associated surface water body is at a distance greater than 400 feet from a Class A surface water source;
- (e) a lateral distance of 100 feet for 400 feet upstream, on both sides of the river, of a Class B Drinking Water Intake;
- (f) 50 feet of any identified Private Well;
- (g) ten feet of any Wetlands or Water Over Wetlands;
- (h) ten feet of the mean annual high-water line of any river; and
- (i) ten feet of any Certified Vernal Pool.

Person, an individual, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or its political subdivisions, administrative agencies, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agent or assignee, or a group of persons.

Person Aggrieved, any person who, because of an act or failure to act by the Department may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in 333 CMR 11.00. Such person must specify in writing sufficient facts to allow the Department to determine whether or not the person is in fact aggrieved.

Private Well, any private drinking water supply identified by the local Board of Health, the well owner or the Department of Agricultural Resources.

Private Well Registry, a registry of private wells located within 100 feet of a right-of-way which is maintained by the Department of Agricultural Resources. Homeowners must notify the Department by completing a registration form which is available directly from the Department or online at the Department website.

Public Water Supplier, as defined at 310 CMR 22.02(1), any person who owns or operates a public water supply system.

Public Ground Water Source, a source of water for a Public Water Supply System, as that term is defined in the Massachusetts drinking water regulations at 310 CMR 22.02.

Right(s)-of-way (ROW), any roadway, or thoroughfare on which public passage is made and any corridor of land over which facilities such as railroads, powerlines, pipelines, conduits, channels or communication lines or bicycle paths are located.

Rights-of-way Advisory Panel, a panel established to advise the Department on issues relating to 333 CMR 11.00 and to fulfill specific functions as detailed within 333 CMR 11.05 and 11.11.

River, a river as defined at 310 CMR 10.04 and as identified on the most current available maps prepared by the Department of Environmental Protection.

Riverfront Area, a riverfront area as defined at 310 CMR 10.58(2) and as identified on the most current available maps prepared by the Department of Environmental Protection. In general, this term shall mean the area between the mean annual high-water line of a perennially flowing river and a parallel line 200 feet away.

Selective Application, any application of herbicides, in such a manner that the delivery to the target vegetation is optimized and delivery to non-target vegetation and the environment is minimized.

## 11.02: continued

Sensitive Areas, as defined in 333 CMR 11.04, any areas within Rights-of-Way, including No-Spray and Limited-Spray Areas, in which public health, environmental or agricultural concerns warrant special protection to further minimize risks of unreasonable adverse effects.

State-listed Species, any species on the Massachusetts list of Endangered, Threatened, and Special Concern Species as described in the Massachusetts Endangered Species Act (M.G.L. c. 131A; 321 CMR 10.02).

State-listed Species Habitat, the Estimated Habitats of Rare Wildlife (310 CMR 10.59 and 10.37) and the Priority Habitats for State-listed Species (321 CMR 10.02) as shown on the most recent edition of the Massachusetts Natural Heritage Atlas prepared by NHESP.

Stem Treatment, any technique including, but not limited to, stump, basal, stem, injection, banding, frill, or girdle and any other technique which delivers herbicide at low pressure to the stump, base or stem of the target vegetation.

Surface Water Source, any lake, pond, reservoir, river, stream or impoundment designated as a public water supply in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, as identified on the most current available maps prepared by the Department of Environmental Protection.

Target Vegetation, any plant species which has the potential to interfere with the operation and safety of the right-of-way.

Touch-up Application, any limited application of herbicides following an initial treatment, which is necessary to achieve the desired vegetation control.

Tributary, as identified on the most current available maps prepared by the Department of Environmental Protection, any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A surface water source, as defined in 314 CMR 4.05(3)(a).

Vegetation Management Plan (VMP), a long term management plan for the applicant's right-of-way system which describes the intended program for vegetation control over a five year period.

Vernal Pool, see Certified Vernal Pool.

Water Over Wetlands, the ocean or any estuary, lake or pond as defined at 310 CMR 10.04.

Wetlands, any of the following areas as defined in 310 CMR 10.02(1)(a), (b), (c) and (f):

- |     |  |           |             |
|-----|--|-----------|-------------|
| (a) | Any bank,  |           | the ocean   |
|     | any freshwater wetland,  |           | any estuary |
|     | any coastal wetland,   |           | any creek   |
|     | any beach,   | bordering | any river   |
|     | any dune,  | on        | any stream  |
|     | any flat   |           | any pond    |
|     | any marsh,   |           | or any lake |
|     | or any swamp;  |           |             |
| (b) | Land under any of the water bodies listed in 333 CMR 11.02: <u>Wetlands</u> (a); and |           |             |
| (c) | Land subject to tidal action.  |           |             |

## 11.02: continued

Wetlands Determination, a written determination of the boundaries of Wetlands and boundaries of areas within 100 feet of Wetlands in accordance with the regulations of the Department of Environmental Protection (DEP) at 310 CMR 10.05(3)(a)1. and 2. 310 CMR 10.03(6)(b) requires applicants not eligible for a public utility exemption to submit these determinations with their VMPs if they will apply herbicides within 100 feet of wetlands and will not submit a Notice of Intent under M.G.L. c. 131, § 40, the Wetlands Protection Act. In order to obtain a Wetlands Determination, the applicant should submit a request to the conservation commission on maps of a scale that will enable the conservation commission or Department of Environmental Protection to find and delineate the boundaries of Wetlands and buffer zones within the vicinity of the right-of-way herbicide management area. To be considered "valid", the Wetlands Determination should be made no sooner than six months immediately prior to the submission of the Vegetation Management Plan. The Wetlands Determination shall cover the period of the Vegetation Management Plan only and shall expire at the end of the five year period of that Vegetation Management Plan.

Yearly Operational Plan (YOP), the yearly operational plan which describes the detailed vegetation management operation for the calendar year consistent with the terms of the long term Vegetation Management Plan.

Zone A, as identified on the most current available maps prepared by the Department of Environmental Protection, the protective land area for a Surface Water Source, Class A water source, Tributary, or Associated Surface Water Body defined in 310 CMR 22.02 as:

- (a) the land area between the Class A surface water source and the upper boundary of the bank;
- (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and
- (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a Tributary or Associated Surface Water Body.

Zone I, as identified on the most current available maps prepared by the Department of Environmental Protection and as defined at 310 CMR 22.02, the protective radius required around a public water supply well or wellfield. For public water system wells with approved yields of 100,000 gallons per day (gpd) or greater, the protective radius is 400 feet. Tubular wellfields require a 250 foot protective radius. Protective radii for all other public water system wells are determined by the following equation: Zone I radius in feet =  $(150 \times \log \text{ of pumping rate in gpd}) - 350$ .

Zone II, as identified on the most current available maps prepared by the Department of Environmental Protection and as defined at 310 CMR 22.02, the aquifer recharge area for a public water supply well or wellfield.

## 11.03: General Provisions

- (1) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way unless appropriately certified by the Department, or licensed by the Department and working under the on-site supervision of an appropriately certified applicator.
- (2) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way except in accordance with a Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) as approved by the Department. The YOP shall be available at the work site at all times during herbicide applications and be made available to the Department and municipal officials including the Conservation Commission and Board of Health upon reasonable request.
- (3) No person shall handle, mix or load an herbicide concentrate on a right-of-way within 100 feet of a sensitive area.
- (4) The perimeter of any sensitive areas which are not readily identifiable on the ROW shall be identified with a clearly visible marker system, consistent with the VMP, prior to any herbicide application.

11.03: continued

- (5) No foliar application of herbicides shall be used to control vegetation greater than 12 feet in height except for side trimming.
- (6) No herbicide shall be applied when the wind velocity is such that there is a high propensity to drift off target and/or during measurable precipitation, and no person shall apply herbicides in such a manner that results in drift into any No-spray Area.
- (7) No person shall apply herbicides by aircraft for the purpose of clearing or maintaining a right-of-way.
- (8) No touch-up applications shall be carried out except under the following conditions:
  - (a) Touch-up applications must occur within 12 months of the initial application.
  - (b) All applicable public notification procedures of M.G.L. c. 132B, § 6B, as outlined in 333 CMR 11.07(1) and (3), are followed.
  - (c) No more than 10% of the initially identified target vegetation on the applicant's right-of-way in any municipality may be treated and the total amount of herbicide applied in any one year shall not exceed the limits specified by the label or Yearly Operational Plan.
  - (d) The Department may impose such additional restrictions or conditions on the use of herbicides as it deems necessary to protect public health and the environment.
- (9) The Department will maintain mailing lists of individuals and groups desiring to obtain notices on various aspects of the Program.
- (10) No person shall apply any herbicide identified as a Potential Ground Water Contaminant pursuant to 333 CMR 12.00 to a right-of-way.
- (11) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way unless that person has obtained the most current available map of public ground water sources from the Department of Environmental Protection.
- (12) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way unless that person has done one or more of the following:
  - (a) obtained a current list of identified Private Wells within 100 feet of the right-of-way from the Board of Health, or
  - (b) obtained a current list of all private wells, within 100 feet of the right of way from the Department of Agricultural Resources private well registry; or
  - (c) followed an alternative Private Well identification method outlined in an approved YOP.
- (13) The applicator shall provide any employee of any state agency, or authority as defined in M.G.L. c. 3, § 39, when such employee is, within a right-of-way, using pesticides, supervising the use of pesticides, or present during the use of pesticides, with personal protective equipment and clothing. Applicators should note that other federal or state laws or regulations pertaining to pesticide applications may require this personal protective equipment to include protections according to Material Safety Data Sheets (MSDS's), the product label, and any other supporting technical data supplied by the manufacturer.
- (14) Notwithstanding the provisions of 333 CMR 11.03(2) or other provisions of 333 CMR 11.00, the Department may, at its sole discretion, issue Limited Application Waivers to applicants wishing to apply herbicides to clear or maintain rights-of-way without VMPs or YOPs, but only under the following conditions:
  - (a) The applicant must demonstrate either:
    1. that the application will not occur more than once in a five-year period unless a VMP and a YOP are prepared and all other requirements of 333 CMR 11.00 are met; or
    2. that the application is necessary to protect public health or safety.
  - (b) The applicant must still adhere to all public notification requirements established at 333 CMR 11.07(1) and (3).
  - (c) The applicant must provide the Department with a letter establishing the concurrence of the chief elected official or board of selectmen of the municipality where the application is to be made.

## 11.03: continued

(d) The applicant may only use herbicides on the Department's "Herbicides Recommended for Use in Sensitive Areas List."

(e) If the application could impact Wetlands, the Department recommends that the applicant send a copy of its application for a Limited Application Waiver to the Department of Environmental Protection's Division of Wetlands and Waterways no less than 21 days before the proposed application.

(f) It should be noted that, with certain exceptions for public utilities, wetlands regulations at 310 CMR 10.03(6)(b) currently require Wetlands Determinations prior to any application within 100 feet of a Wetland.

Limited Application Waivers shall be issued solely at the Department's discretion, and the Department may impose such additional restrictions or conditions on the use of herbicides as it deems necessary to protect public health and the environment.

11.04: Sensitive Area Restrictions(1) General. In any sensitive area:

(a) No more than the minimum labeled rate of herbicide for the appropriate site, pest, and application method shall be applied.

(b) Herbicides shall only be applied selectively by low pressure, using foliar techniques or basal or cut-stump applications, or other method approved for use by the Department.

(c) No person shall apply herbicides for the purpose of clearing or maintaining a right-of-way in such a manner that results in drift to any area within ten feet of standing or flowing water in a wetland; or area within 400 feet of a public drinking water supply well; or area within 100 feet of any Class A surface water used as a public water supply; or area within 50 feet of a Private Well.

(d) Only herbicides specified by the Department as acceptable for use in sensitive areas pursuant to the Cooperative Agreement executed between the Department of Agricultural Resources and the Department of Environmental Protection on July 1 and 2, 1987, or future amendments thereto, shall be used in sensitive areas. Applicants proposing to use an herbicide which has been registered for use on rights-of-way but has not yet been evaluated pursuant to the provisions of the Cooperative Agreement may request that such herbicides be evaluated pursuant to said provisions. For an herbicide that has been evaluated pursuant to the provisions of the Cooperative Agreement, applicants proposing to use such herbicide in a manner inconsistent with the terms and conditions of use imposed in the guidelines may request a modification or waiver of such terms or conditions. A request for such modification or waiver shall provide a detailed rationale for use, with all relevant data including but not limited to environmental fate, efficacy and human health effects of the proposed herbicide. Such herbicides and/or uses shall be subject to the evaluation standards adopted by the Departments of Agricultural Resources and Environmental Protection in the Cooperative Agreement.

Commentary. Applicants not eligible for the public utilities exemption from the Wetlands Protection Act outlined at 310 CMR 10.03(6)(a), who wish to apply pesticides registered for use in Massachusetts to rights-of-way, may choose to apply herbicides determined to be suitable for use in sensitive areas in accordance with the provisions of the Cooperative Agreement mentioned above or, alternatively, such applicants may proceed pursuant to the provisions of 310 CMR 10.00 as authorized by M.G.L. c. 131, § 40.

(e) The Department may impose such additional restrictions or conditions on the use of herbicides within or adjacent to sensitive areas as it determines necessary to protect human health or the environment. Such changes may be proposed by a municipal agency or individual during the public comment period.

(f) In the event of a question or dispute as to which setback applies to a sensitive area, the most restrictive setback shall apply.

(2) Water Supplies.(a) Public Ground Water Sources.

1. No herbicides shall be applied within a Zone I.

2. No herbicides shall be applied within a Zone II or IWPA unless:

## 11.04: continued

- a. A minimum of 24 months has elapsed since the last application to the site; and
  - b. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.
- (b) Class A Public Surface Water Sources, Associated Surface Water Bodies, Tributaries and Class B Drinking Water Intakes.
  - 1. No herbicides shall be applied within 100 feet of any Class A public surface water source.
  - 2. No herbicides shall be applied within 100 feet of any tributary or associated surface water body located within the Zone A of a Class A public surface water source, or within ten feet of any tributary or associated surface water body located outside of the Zone A of the Class A public surface water source.
  - 3. No herbicides shall be applied within a lateral distance of 100 feet for 400 feet upstream of any Class B Drinking Water Intake.
  - 4. No herbicides shall be applied within a distance of between 100 feet from any Class A surface water source and the outer boundary of any Zone A, or within a distance of between ten feet and the outer boundary of the Zone A for any tributary or associated surface water body located outside of the Zone A of a Class A surface water source, or within a lateral distance of between 100 and 200 feet for 400 feet upstream of a Class B Drinking Water Intake, unless:
    - a. A minimum of 24 months has elapsed since the last application to the site; and
    - b. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.
- (c) Private Wells.
  - 1. No herbicides shall be applied within 50 feet of an identified Private Well.
  - 2. No herbicides shall be applied within a distance of between 50 feet and 100 feet of an identified Private Well, unless:
    - a. A minimum of 24 months has elapsed since the last application to the site; and
    - b. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.
- (3) State-listed Species Habitat.
  - (a) Any person proposing to apply an herbicide within any State-listed Species Habitat who does not have a current Yearly Operational Plan approved in writing by the Division of Fisheries and Wildlife pursuant to 321 CMR 10.14(12), shall submit all necessary materials required for review pursuant to 321 CMR 10.18.
  - (b) The management of vegetation within existing utility rights-of-way shall be exempt from the requirements of 321 CMR 10.18 through 10.23, provided that the management is carried out in accordance with a Yearly Operational Plan approved in writing by the Division of Fisheries and Wildlife, pursuant to 321 CMR 10.14(12).
  - (c) No person shall apply an herbicide within State-listed Species Habitat unless the application is approved by the Division of Fisheries and Wildlife pursuant to 333 CMR 11.04(3)(a) and (3)(b), and such approval is submitted to the Department.
- (4) Wetlands, Waters Over Wetlands, Riverfront Areas, and Certified Vernal Pools.
  - (a) No herbicide shall be applied on or within ten feet of a Wetland or Water Over a Wetland, within ten feet of the mean annual high-water line of any River, or within ten feet of any Certified Vernal Pool.
  - (b) No herbicide shall be applied on or within a distance of between ten feet and 100 feet of any Wetland or Water Over a Wetland, within a distance of ten feet from the mean annual high-water line of any River and the outer boundary of any Riverfront Area, or within a distance of ten feet from any Certified Vernal Pool and the outer boundary of any Certified Vernal Pool Habitat unless:
    - 1. A minimum of 12 months has elapsed since the last application to the site; and
    - 2. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.
  - (c) Notwithstanding 333 CMR 11.04(4)(a) and (b), public utilities providing electric, gas, water, telephone, telegraph and other telecommunication services (and other applicants, if consistent with all relevant provisions of the Massachusetts Wetlands Protection Act and its regulations in effect at the time of application) may apply herbicides on or within ten feet of a Wetland in accordance with the following conditions:

## 11.04: continued

1. Submission of a study, the design of which is subject to prior approval by the Departments of Agricultural Resources and Environmental Protection, evaluating impacts of the proposed vegetation management program utilizing herbicides on or within ten feet of Wetlands, and comparing those impacts to those which would result if only non-chemical control methods were used in these areas. The study must detail vegetation management practices and use patterns specific to those used by the type of entity submitting the study; and
  2. A finding by the Department, after consultation with the Rights-of-way Advisory Panel, that the proposed vegetation management program utilizing herbicides on or within ten feet of Wetlands will result in less impacts to the Wetlands than mechanical control.
  3. Notwithstanding the above, no herbicides shall be applied on or within ten feet of any standing or flowing water in a Wetland.
- (5) Inhabited and Agricultural Areas. No foliar herbicide shall be applied within 100 feet of any Inhabited Area or any Agricultural Area unless:
- (a) A minimum of 12 months has elapsed since the last application to the site; and
  - (b) Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.

11.05: Vegetation Management Plan (VMP)

- (1) General.
  - (a) Unless otherwise specified by the Department, all VMPs should be submitted by the applicant no later than September 1<sup>st</sup> prior to the calendar year of the proposed first year of maintenance. All approved VMPs shall be effective for a five year period unless otherwise modified, or revoked by the Department.
  - (b) The VMP shall be presented on forms and/or format approved by the Department.
- (2) Requirements. The VMP shall include, but not be limited to, the following:
  - (a) General statement of goals and objectives of the VMP.
  - (b) Identification of target vegetation.
  - (c) Intended methods of vegetation management and rationale for use, including vegetation control techniques, equipment proposed for use, timing of applications and alternative control procedures.
  - (d) Discussion of justification for proposed herbicide applications, including a description of the alternative control methods considered and the reasons that they were rejected.
  - (e) Methods, references and sources for identifying sensitive areas and control strategies proposed for sensitive areas. Applicants should note that the Department of Environmental Protection regulations at 310 CMR 10.03(6)(b) require Wetlands Determinations for applicants that are not eligible for a public utility exemption.
  - (f) Operational guidelines for applicators relative to herbicide use.
  - (g) Identification and qualifications of individuals developing and submitting a plan.
  - (h) A detailed description of the IPM Program, showing how it will minimize the amount and frequency of herbicide application.
  - (i) Description of alternative land use provisions or agreements that may be established with individuals, state, federal or municipal agencies that would minimize the need for herbicides, including the rationale for accepting or denying any reasonable request made by any individual.
  - (j) Description of a remedial plan to address spills and related accidents.
  - (k) For state agencies and authorities as defined in M.G.L. c. 3, § 39, a description of the applicant's policy to eliminate or, if necessary, reduce the use of pesticides for any vegetation management purpose along roadways, and a demonstration that, for the proposed application, the costs of non-chemical vegetation control significantly outweigh the benefits.
- (3) Public Notice, Review and Comment.
  - (a) Upon receipt of the proposed VMP, the Department shall schedule and hold appropriate regional public hearings affording all interested parties the opportunity to comment, both at the hearings and in writing to the Department, on the proposed plan.

## 11.05: continued

(b) At least 21 days prior to the public hearings, the Department shall publish notice of the hearings in the *Environmental Monitor* and regionally located newspapers, and send notice to municipalities covered by the plan and to the appropriate mailing list. The notice will include locations where copies of the VMP can be reviewed.

(c) The public shall have no less than 45 days, starting from publication of the *Environmental Monitor* notice, to comment upon proposed VMPs, unless the Department extends the comment period for good cause.

(d) Wherever a chief elected official, Board of Health or Conservation Commission in a municipality covered by the proposed VMP requests a copy of the proposed plan, the applicant shall, at least 21 days prior to the end of the public comment period, respond to this request. The response must either include a copy of the proposed VMP, or an Internet address where the VMP may be viewed and a note that a hard copy will be provided promptly upon further request.

(4) Disposition of VMP.

(a) 25 copies of the proposed VMP shall be submitted to the Department. The Department shall distribute copies of the proposed VMP to each member of the Rights-of-way Advisory Panel. The Department may, at its sole discretion, allow electronic presentation of the VMP in lieu of some or all of the 25 copies that would otherwise be submitted pursuant to 333 CMR 11.05(4).

(b) Within 30 days of the end of the public comment period unless extended for good cause, the Rights-of-way Advisory Panel shall review the VMPs and recommend in writing to the Department approval, denial or modification of each VMP; if necessary, the Advisory Panel may request additional information from the applicant.

(c) Within 21 days of the end of the Rights-of-way Advisory Panel review period, unless extended by the Department for good cause, the Department will notify the applicant and the Advisory Panel in writing one of the following:

1. request for additional information or modification;
2. denial of VMP; or
3. approval of VMP.

(d) The VMP may be modified, withdrawn or amended by the applicant through a written request sent by certified mail to the Department.

(e) Resubmission of a denied VMP, updating of a VMP, or a significant amendment to an approved VMP shall be processed according to 333 CMR 11.05.

(f) The applicant must send a copy of the approved VMP, or an Internet address where the VMP may be viewed and a note that a hard copy will be provided promptly upon further request, to the chief elected official, Board of Health, and Conservation Commission in each municipality covered by the plan.

(5) Time for Action. Non-action by the Department on a VMP within the time specified in 333 CMR 11.05 does not constitute approval of the submitted plan. In the event that the Department fails to notify the applicant of a decision within the time specified in 333 CMR 11.05(4) and upon written request from the applicant, the Commissioner must issue a finding within ten days of receipt stating the reason for the delay and providing an estimated completion date.

11.06: Yearly Operational Plan (YOP)(1) General.

(a) The applicant is responsible for the accuracy and completeness of all information submitted with the YOP. The YOP shall be consistent with the objectives of the VMP and shall describe the intended operational program for that calendar year.

(b) The YOP shall be presented on forms and in a format approved by the Department.

(2) Requirements. The YOP shall include but not be limited to the following:

- (a) Maps locating the rights-of-way and sensitive areas not readily identifiable in the field;
- (b) Herbicides proposed including Environmental Protection Agency (EPA) Registration numbers, application rates, carriers and adjuvants;
- (c) Herbicide application techniques and alternative control procedures proposed.
- (d) The name, address and phone number of the company which will perform any herbicide



11.06: continued

- (e) Identification of target vegetation;
  - (f) The name, address and phone number of the individual representing the YOP applicant;
  - (g) Description of methods used to flag or otherwise designate sensitive areas on the right-of-way;
  - (h) Herbicide Fact Sheets as approved by the Department; and
  - (i) Procedures and locations for handling, mixing and loading of herbicide concentrates.
- (3) Public Notice, Review and Comment.
- (a) Upon submittal of the YOP for approval, the Department will publish a notice in the *Environmental Monitor*. Said notice shall be provided by the applicant and shall include the information on the municipalities through which the rights-of-way pass, a brief description of the intended program, and the procedure for public review and comment. The Department shall send notification of the publication to the applicant and the appropriate mailing list.
  - (b) Upon submittal of the YOP to the Department, the applicant shall provide by certified mail under separate cover to the Board of Health, Conservation Commission, chief elected municipal official, and where applicable, the Massachusetts Water Resources Authority and Massachusetts Department of Conservation and Recreation, a copy of the proposed YOP (or an Internet address where the proposed YOP may be viewed and a note that a hard copy will be provided promptly upon request) and the *Environmental Monitor* notice for the municipality or municipalities in which the herbicide treatment is proposed. Community water suppliers shall receive electronic information or a one page notification by mail which provides details about where to receive more information. The applicant shall maintain copies of the packet sent to municipalities and certified mail receipts. The applicant shall make copies of the packet, certified mail receipts, and any further correspondence regarding hard copies of YOPs in lieu of Internet viewing, available to the Department upon request.
  - (c) The Department shall allow a 45-day comment period on proposed YOPs, unless extended for good cause, commencing with the publication of the notice in the *Environmental Monitor* and receipt of the proposed YOP and *Environmental Monitor* notice by each municipality.
  - (d) The Department may approve, deny or modify YOPs after the 45-day comment period has expired.
- (4) Disposition of YOP.
- (a) The applicant shall submit the YOP to the Department at least 90 days prior to the proposed commencement of application to allow completion of the comment and review period.
  - (b) The Department shall review the YOP to ensure that the YOP is consistent with the approved VMP. Any inconsistencies or deficiencies will be noted by the Department and returned with the YOP to the applicant.
  - (c) Where practical, the Department shall approve or deny the YOP within 90 days of receipt. The Department will provide notice of the decision to the applicant, municipal agencies and commentators in writing.
  - (d) The approved YOP in conjunction with the VMP shall govern the application of herbicide for a period not to exceed 12 months in accordance with other laws and regulations of the State and Federal governments and impose such conditions as necessary to minimize the risk of adverse effects on human health and the environment.
- (5) Time for Action. Non-action by the Department on a YOP within the time specified in 333 CMR 11.06(4) does not constitute approval of the submitted plan. In the event that the Department fails to notify the applicant of a decision within the time specified and upon a written request from the applicant, the Commissioner must issue a finding within ten days of receipt stating the reason for the delay and providing an estimated completion date.

11.07: Public Notification

(1) At least 21 days in advance of application of herbicide to a right-of-way in any city or town, the applicant shall notify the Department, the board of health, and the local public water supplier and, by registered mail, the Mayor, City Manager or Chairman of the Board of Selectman, and the conservation commission in the municipality where the right-of-way lies. The notice shall include the following information: the approximate dates on which such herbicide application shall commence and conclude, provided however, that said application shall not commence more than ten days before nor conclude more than ten days after said approximate dates; the method and locations of application; a Department-approved Herbicide Fact Sheet on the active ingredient(s) of the herbicide(s) used; the EPA registration number(s) for the herbicide(s) used; the name, title, business address and phone number of the certified commercial applicator or licensed applicator, or the contractor, employer or employees responsible for carrying out the application. Where specific information required for this notice is already contained in the current YOP that is on file with the local official, the applicant may incorporate the appropriate pages of the YOP by reference in its notice to that official, indicating that these pages are also directly available from the applicant upon request.

(2) This public notice may run concurrently with the public notice and comment period in 333 CMR 11.06(3), provided that the notice is distributed at least 21 days prior to the herbicide application, and that, prior to the herbicide application, the public notice and comment period has closed and the Department has granted YOP approval without modifications. When the Department's final approval requires modifications or application dates are selected after YOP approval, separate notice under 333 CMR 11.07(1) is required.

(3) At least 48 hours prior to the application referred to in 333 CMR 11.07(1), the applicant must publish a conspicuous notice in at least one newspaper of general circulation in the city or town where the right-of-way lies. The notice must appear in the local section of the newspaper and measure at least four by five inches in size. The notice shall contain the following information: the method and locations of pesticide application; the approximate dates on which the pesticide application shall commence and conclude, provided that the applications shall not commence more than ten days before nor conclude ten days after said approximate dates; a list of potential pesticides to be used; a description of the purpose of the application; and the name, title, business address and phone number of a designated contact person representing the applicant from whom any citizen may request further information. The notice should apply only to the calendar year in which the notice is published. Upon request the notice must be made available to the Department.

11.08: Notice of Modification and Revocation

(1) The Department may suspend approval of any VMP or YOP, by written notice to the applicant and applicator, halting the application of herbicide to that right-of-way of the YOP. After 21 days if the applicant does not request a hearing, the Department may revoke or modify the VMP and YOP, if it finds:

- (a) that the terms, conditions of restrictions thereof, are being violated or are inadequate to avoid unreasonable adverse effects on the environment or on human health; or
- (b) that the applicant has made a false or misleading statement or has not provided information requested by the Department or Rights-of-way Advisory Panel; or
- (c) that the applicant has violated any provision of the Massachusetts Pesticide Control Act or FIFRA, or any regulations, standards, orders or license issued under either.

(2) Upon notice of revocation or modification, the applicant may modify the YOP by written request to the Department. Applications to modify the YOP shall be submitted in the manner set forth in 333 CMR 11.06 and disposed of in the manner set forth in 333 CMR 11.06. The Department may waive all or part of the requirement if it determines that the proposed changes do not significantly change the terms of the approved YOP.

## 333 CMR: PESTICIDE BOARD

### 11.09: Right-of-appeal

Any person aggrieved by the decision of the Department to approve, deny, modify or revoke a VMP or YOP may request an adjudicatory hearing. The request for a hearing must be received by the Department within 21 calendar days after receipt of the decision. The request should state clearly and concisely the facts of the proceeding, the reasons the decision is alleged to be inconsistent with 333 CMR 11.00 and the relief sought by the adjudicatory hearing. The adjudicatory hearing before the Pesticide Board shall be conducted in accordance with the informal rules of adjudicatory proceeding as set forth in M.G.L. c. 30A.

### 11.10: Penalties

Any person who violates any provision of 333 CMR 11.00 shall be subject to the criminal and civil penalties set forth in M.G.L. c. 132B, § 14.

### 11.11: Rights-of-way Advisory Panel

(1) A Rights-of-way Advisory Panel shall be established to advise the Department on issues relating to 333 CMR 11.00 and to fulfill specific functions as detailed within 333 CMR 11.00.

(2) The Department shall request that the following members participate on the Rights-of-way Advisory Panel: the Commissioners/Secretaries or his/her designee of the Department of Environmental Protection, the Department of Public Health, and the Executive Office of Transportation; and a representative, respectively, from each of the following, all to be appointed by the Department Commissioner: the Massachusetts Association of Conservation Commissions, the Massachusetts Association of Health Boards, the Massachusetts Department of Conservation and Recreation, and an Environmental Advocacy Organization Representative, a member of the University of Massachusetts Extension who is well versed in weed science and Integrated Pest Management of weeds, a representative of the Massachusetts Railroad Association, a representative of a utility company and a commercial pesticide applicator.

(3) Non-agency representatives shall remain on the panel for a term of five years. Any member absent from two or more consecutive meetings may be removed from the Advisory Panel at the discretion of the Commissioner of the Department, and a replacement requested from the representative agency, industry group, or association.

(4) The Advisory Panel shall meet at least once each year, and shall hold further meetings upon the request of the Department of Agricultural Resources or at the request of any two members of the Advisory Panel.

(5) All Advisory Panel members shall serve without compensation.

## REGULATORY AUTHORITY

333 CMR 11.00: M.G.L. c. 132B.